UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

PROVENA ST. JOSEPH MEDICAL CENTER

Employer

and

PROVENA HEALTH

Employer **Case 13-UC-429**

and

ILLINOIS NURSES ASSOCIATION

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on February 25, 2011, before a hearing officer of the National Labor Relations Board.[1]

I. Issue

Petitioner, Illinois Nurses Association, seeks to clarify an existing bargaining unit[2] of approximately 830 registered nurses (RNs) who work for Provena St. Joseph

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[1] Upon the entire record in this proceeding, the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
b. Provena Health and Provena St. Joseph Medical Center are employers engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

[2] The bargaining unit was certified on December 24, 2001 and comprises the following:

> All full-time and regular part time registered nurses employed by the Employer at its facilities presently located at 333 North Madison, Joliet, Illinois; 310 Hammes Ave., Joliet, Illinois; satellite family care centers at New Lenox, Mokena, and Coal City, Illinois; and Carrillon Health Living Center; but excluding all other employees, physicians, technical employees, skilled maintenance employees, business office, and clerical employees, non-professional employees, guards, and supervisors as defined in the Act.

Medical Center to include a group of 12 RNs that are employed by Provena Health ("PH") and work at the Provena Surgical Center into the same unit. PH is the parent corporation of Provena Hospitals which in turn is the umbrella corporation for six hospitals, one of which is the Medical Center. The various entities under the PH umbrella are referred to as ministries. The petitioner contends that PH and the Medical Center are a single employer, and Surgical Center RNs share a community of interest with the Medical Center RNs to warrant their accretion into the Medical Center unit. In contrast, the Medical Center and PH contend that they are separate employers who have not agreed to a multi-employer unit which requires the consent of the employers and that there is not a sufficient community of interest to accrete the Surgical Center RNs into the Medical Center unit.

II. Decision

I find, for the reason fully detailed below, that PH and the Medical Center are separate employers and accretion of the Surgical Center RNs to the existing bargaining unit of RNs at the Medical Center is inappropriate. Further, even if PH the Medical Center were found to be a single employer, accretion of the Surgical Center RNs into the Medical Center bargaining unit would not be warranted. According, the petition is dismissed.

III. Statement of Facts

A. The Ambulatory Surgical Center

The Surgical Center opened in the summer of 2006 as the Ambulatory Surgical Center of Joliet (ASC), a joint venture owned 55% by a physician group and 45% by the Medical Center. The ASC provided outpatient surgical services and is located in a building adjacent to the Medical Center. The management, accounting, and human resources functions at the ASC were contracted out to various companies. Employees working at the ASC were directly employed by the ASC and reported to Marge Schillaci, the ASC's director. The ASC provided its own linen, medical supplies, and uniforms. Nurses who worked at the Medical Center and wished to work at the ASC had to go through the ASC's hiring process. Similarly, nurses who worked at the ASC and wished to work at the Medical Center had to go through the hiring process at the Medical Center. The ASC and the Medical Center had different wage scales and benefits.

On December 15, 2010, as a result of the acquisition by the Medical Center of the 55% owned by the physicians group, the ASC became the Provena Surgical Center. At that time a number of the physicians that were part of the physicians group that had owned the 55% share of the ASC, formed the Surgical Center of Joliet Management Company (SCOJ). SCOJ was hired by the Medical Center to manage the day-to-day operations of the Surgical Center. Marge Schillaci continued to be the Medical Center's director and is the only employee that is employed and paid by SCOJ; all other employees of the Surgical Center are employed by and receive their payroll checks directly from PH, not the Medical Center. However, Schillaci reports directly to SCOJ and to the Vice

President of Patient Care Services at the Medical Center. All employees at the Surgical Center report to Schillaci.

PH Human Resources is in charge of all human resources functions and maintains the personnel files of the Surgical Center employees. Employees at the Surgical Center must abide by PH's system-wide rules and procedures as well as the corporate rules and procedures set forth by PH and the site specific rules of the Surgical Center. PH screens all applicants for positions at the Surgical Center. Qualified candidates are then interviewed by Schillaci who ultimately decides who to hire. However, Schillaci does not have the authority to hire an applicant that was deemed unqualified by the PH Human Resources. PH Human Resources also oversees the disciplinary process for the Surgical Center employees and is involved in every termination of an employee. There is an internal appeal process for any disciplinary matters that applies only to PH employees. PH also has its own tardiness and attendance policies which are slightly different than those of the Medical Center. The Medical Center does not play a role in the hiring or disciplining of employees at the Surgical Center.

After the acquisition of the Surgical Center by the Medical Center, all linen, medical supplies, and medication as well as housekeeping services are provided by the Medical Center. The cost for these services is billed to the Surgical Center. The Surgical Center RNs now use the same paperwork, time management system, and prescription delivery system used by the Medical Center and were trained in their use by a Medical Center RN. The RN testified that she filed out separate paperwork in order for her time to be billed to the Surgical Center. The Surgical Center has its own budget, which is approved by the Medical Center.

The Surgical Center employees are not supervised by the Medical Center nursing supervisors and the Surgical Center nursing supervisors do not supervise the Medical Center RNs. Because the Medical Center must be staffed 24-hours, 7 days a week, the Medical Center RNs work schedules cover all hours of operation, including nights, weekends, and holidays. The Surgical Center RNs do not work on weekends, holidays, or at nights as the Surgical Center is only open during the day Mondays through Fridays. The Medical Center and the Surgical Center RNs perform nursing functions pursuant to their respective RN job description. Unlike their counterparts at the Medical Center, the Surgical Center RNs are required to clean their own rooms, which includes making beds and tidying up between procedures. The Surgical Center uses PRN nurses which the Surgical Center Director described as nurses from the Medical Center that come when needed. They have no set hours or schedules but are used quite often. The PRN nurses used at the Surgical Center fill out applications, are interviewed by the Surgical Center, and are offered a job as a PRN nurse at the Surgical Center. The Surgical Center RNs do not use the parking lot or break rooms used by the Medical Center employees.

B. Provena Health

Provena Health (PH) is the parent company for various ministries which provide hospital services, long-term care, and home care, and includes Provena Hospitals, Senior Services, Provena Ventures and Provena Health Assurances. Provena Hospitals operates six hospitals including the Medical Center. PH's corporate office as well as its Human Resources Department is located in Mokena, Illinois. PH corporate employs approximately 630 employees who are spread over several locations. Because the employees are at different locations, they have a greater choice of benefits to choose from whereas employees who work at a particular ministry have benefit choices which are site specific. All ministries in the PH system have their own separate human resources department, which manages all human resources functions within that ministry, including the recruitment and disciplining of its employees. However, they must abide by system-wide policies issued by PH. PH obtains some benefits for all the ministries, including health and life insurance, as well as the service providers for all ministries in the PH system. There is a system-wide compensation team that does market analysis studies and makes recommendations to the individual ministries regarding employee compensation. The individual ministries, taking into account their individual circumstances, have discretion to adopt or not the recommendations of the system-wide compensation team. The record shows that at least on once occasion, PH has imposed a system wide 1.5% merit pay increase for all its ministries.

PH provides IT support for all the ministries. The ministries do not have independent websites; they can only be accessed through the PH website. Similarly, job posting for the various ministries can only be accessed by going to the PH website and then to the specific ministry. Ministries must abide by the System Position Requisition Process Policy in order to hire an employee. The policy calls for the ministry to seek and obtain authorization from the Performance Excellence Office, which must determine that there is a need to fill a position. The PEO is made up of system vice presidents. Once the PEO approves the request, it goes to the vice president of the respective ministry. After approval by the vice president for the respective ministry, it goes to the Staffing Resource Committee (SRC) at the ministry. The SRC is made up of members of the executive team of the ministry. After receiving SRC approval it goes to the human resources department at the ministry. Approved positions must be posted for a minimum of seven calendar days so that current employees within the various Provena ministries can apply and be considered. The individual ministry's human resources department is tasked with identifying, screening, and interviewing applicants.

PH and the Medical Center have separate corporate bylaws, board of directors, tax identification numbers, budgets, bank accounts, financial statements, accounts payable and receivable departments, and file separate IRS form 990s.

C. The Medical Center

The Medical Center is an acute care hospital employing approximately 2,640 employees, including approximately 830 RNs represented by the Petitioner. Although the Medical Center must abide by PH system-wide policies, they have their own human resources department which administers site specific procedures and guidelines for hiring and disciplining its employees. Once a position has been authorized to be filled, it is the Medical Center who screens, interviews, and ultimately extends a job offer to the applicant. PH Human Resources does not play a role in the selection process of applicants for positions at the Medical Center. The Medical Center has its own employee evaluation form and process as well as its own attendance and tardiness policies. The compensation and benefits for the RNs at the Medical Center are determined by the collective-bargaining agreement. Presently, the wage scale for the RNs at the Medical Center has a slightly higher top wage scale than exists at the Surgical Center.

IV. Analysis

A. Single Employer

The Board examines four factors to determine whether a single-employer relationship exists between two seemingly separate employing entities. Those factors are: (1) common ownership; (2) common management; (3) interrelation of operations, and; (4) common control over labor relations. Not all factors need be present and no single factor is controlling. Single employer status depends in all the circumstances and is characterized by the absence of an arms-length relationship. *Bolivar-Tess, Inc*. 349 NLRB 720 (2007); *Mercy General Health Partners,* 331 NLRB 783 (2000).

The Board addressed the aforementioned factors in *Mercy Hospital of Buffalo*, 336 NLRB 1282 (2001). Although the Board found some degree of common ownership as well as an identical board of directors, it determined that common ownership alone did not establish a single-employer relationship and that absent evidence of one of the entities exercising control over the day-to-day operations or labor relations of the other, no single employer relationship existed.

Mercy General, supra, is factually similar to the instant matter, involving subsidiaries in a multi-layered corporate structure. In *Mercy General*, there was clear common ownership and the provision of resources between the two entities in question. However, the Board found that the provision of resources was an arms length transaction and, thus, was not enough to find a single employer relationship. The most significant factor against finding a single employer relationship in *Mercy General*, id. at 785, was that:

> [N]o single-employer relationship exists where the actual day-to-day management and labor relations functions are cared out by each entity's own managers and officers. In the instant case, each entity has its own managers who supervise their distinct group of employees; there is no

> "cross supervision"; employees are subject to different personnel policies; and labor relations functions are handled by separate individuals

All of the cited factors are applicable herein.

In the instant case, as in *Mercy General*, there is common ownership. Nevertheless, the record shows that the corporate formalities between PH, Provena Hospitals, and the Medical Center have been maintained and that transactions that occur between them are at arms length. For example, the training of the Surgical Center RNs by a Medical Center RN in using the new systems and paper forms was billed to the Surgical Center. As to management, the Surgical Center RNs are supervised in their day-to-day activities by a director employed by neither PH nor the Medical Center, but by SCOJ, a management company. To the extent that the Director at the Surgical Center reports to the Vice President of the Medical Center there is no record evidence this relationship results in any day-to-day control by the Medical Center over the Surgical Center.

Similarly, the record does not demonstrate how the Medical Center's approval of the budget impacts the Surgical Center and its day-to-day operation. While there is a degree of common control of all the ministries within the PH system through the system-wide policies which relate to wages, benefits, and working conditions, each of the ministries have their own separate lines of supervision, their set policies and procedures pertaining to local conditions, and each have their own independent human resources department which handles the day-to-day labor relations at each ministry. Thus, the Surgical Center has its own line of supervision that does not supervise any employees at the Medical Center, and no Medical Center supervisor supervises the day-to-day activities of the Surgical Center.

Day-to-day labor relations matters at the Surgical Center are under a different Human Resources department than the day-to-day labor relations matter at the Medical Center. The Director of the Surgical Center makes the determination as to whom to hire; no from the Medical Center is involved in the hiring decision. There is no interchange of employees between the Surgical Center and the Medical Center other than the fill-in PRN nurses, and the Surgical Center goes through a formal hiring process making the PRN nurses their own employees when working at the Surgical Center. Based on the above and the record as a whole, and noting particularly the absence of centralized control over day-to-day labor relations, I find that PH and the Medical Center are separate employers.

I find that the cases sited by the Petitioner in support of its contention that a single employer relationship exists between PH and the Medical Center are distinguishable on the facts from the instant matter. In *Child's Hospital,* 307 NLRB 90(1992), there was a significantly higher integration of operations between the two entities found to be a single employer than herein, and the human resources department in that case covered all aspects of labor relations – unlike here where there are separate human resource departments covering day-to-day labor relations matters. *Mercy Health Services North,* 311 NLRB 367, cited by the Petitioner dealt with the issue of a transfer of some operations and employees to a different facility, and the appropriateness of a unit clarification petition in light of the rationale in *Gitano Distribution Center,* 308 NLRB 1172 (1992).

Mercy Health did not deal with the issue of whether two separate entities constitute a single employer under the Act.

As PH and the Medical Center are not a single employer and have not consented to a multi-employer unit[3], the union's petition is inappropriate and is therefore dismissed.

B. Accretion

Assuming, *arguendo*, that PH and the Medical Center were a single employer, the accretion of the Surgical Center's RNs into the existing unit at the Medical Center would nevertheless be inappropriate. Accretion is the addition of a group of employees into an established bargaining unit when there is such an overwhelming community of interest among the entire group that the employees being added have no separate identity from the unit they are being added to. *Progressive Service Die Co*., 323 NLRB 183, 186 (1997). The Board narrowly construes the application of the accretion doctrine because it deprives the employees being accreted of the right to determine their own collective bargaining representative. *Archer Daniels Midland Co.*, 333 NLRB 673, 675 (2001). Therefore, if the group of employees sought to be added to an established bargaining unit may constitute a separate appropriate unit, they will not be accreted. *Passavant Retirement & Health Ctr.., Inc.,* 313 NLRB 1216 (1994).

A number of factors must be balanced and considered when determining if an accretion is appropriate. Those factors include physical contact among employees; integration of operations; employee interchange; supervision; geographic proximity; centralized control of management and labor relations; similarity of skills and functions; similarity of terms and conditions of employment; and collective bargaining history. *Archer Daniels,* supra at 675. The degree of employee interchange and common day-to-day supervision has been identified by the Board as being of particular importance in determining if an accretion is appropriate. *Passavant Retirement*, supra at 1218.

In the instant case, RNs at the Surgical Center have no interaction with RNs at the Medical Center. Other than one instance in which as part of the transition into the PH system an RN from the Medical Center trained RNs at the Surgical Center, there has been no interchange of employees between the Surgical Center RNs and bargaining unit RNs at the Medical Center. The day-to-day supervision of the Surgical Center employees is separate and distinct from the RNs at the Medical Center. The RNs at the Surgical Center work in a building separate from the Medical Center. Accordingly, I find that the RNs at the Surgical Center would constitute a separate appropriate unit and may therefore not be accrete into the existing RN unit at the Medical Center[4].

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[3]A multi-employer unit is only appropriate if all employers agree. *Oakwood Care Center,* 343 NLRB 659 (2004).

[4] Based on my other findings herein and the lack of clarity on the record, I have not addressed the issue of whether an accretion of the Surgical Center RNs into the Medical Center unit would be inappropriate because the Surgical Center RNs are jointly supervised by PH and SCOJ.

V. Order

Accordingly, it is ordered that clarification of the bargaining unit is not warranted and the petition filed in this matter is dismissed.

VI. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **April 26, 2011**. The request may be filed electronically through E-Gov on the Agency's website, www.nlrb.gov,[5] but may not be filed by facsimile.

Dated at Chicago, Illinois this 12th day of April, 2011.

/s/ Joseph A. Barker
Joseph A. Barker, Regional Director
National Labor Relations Board
Region 13
209 South LaSalle Street, 9th Floor
Chicago, Illinois 60604

UC Petition – Accretion Issues
CATS – 177-1642; 385-7533-4020;

[5] To file the request for review electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlrb.gov.